

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

1 THE CIRCLE, SUITE 2
SUSSEX COUNTY COURTHOUSE
GEORGETOWN, DE 19947

October 14, 2009

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Re: ***State Human Relations Board ex rel Paul Aburrow
v. Sea Colony Recreational Assoc., et al.***
C.A. No. S08C-08-005 RFS

Submitted: September 9, 2009

*Upon Defendants' Motion to Dismiss.
Granted in Part. Denied in Part.*

Dear Counsel:

I have before me a motion to dismiss filed by the Board of Directors of Sea Colony Recreational Association, Inc. ("the Board"), Patrick Davis and Lisa Magee. Defendant Davis was the General Manager of ResortQuest, the managing agent of the Association during the times relevant to this action. Defendant Magee was the president of the Association during the

relevant times. These three Defendants argue that the Complaint should be dismissed as to them because Plaintiffs failed to exhaust their administrative remedies under the Delaware Fair Housing Act (“the Act”). That is, Plaintiffs did not name these Defendants in the administrative complaint.

Facts. Plaintiffs own a condominium in the Sea Colony housing complex in Bethany Beach, Delaware. Since 2006 Plaintiffs have sought from Defendants a parking space on the ocean side of the complex because Mr. Aburrow allegedly cannot safely enjoy the recreational facilities if he has to cross the road. It is uncontested that Plaintiffs’ verbal and written requests have been ignored or denied by these Defendants.

Standard of review. When a motion to dismiss is based on a challenge to personal jurisdiction, the plaintiff has the burden to show a basis for the Court’s jurisdiction.¹ This burden is met by a *prima facie* showing based on the pleadings and/or affidavits that jurisdiction exists.²

The Board is not a proper party. In its Reply to Defendants’ motion, Plaintiffs concede that the Board of Directors is not a proper defendant to this lawsuit. Thus the motion to dismiss is **Granted** as to the Board of Directors.

Defendants Magee and Davis are proper parties. Defendants Magee and Davis argue that they are not proper parties to this action because they were not named in the amended

¹*Plummer & Co. Realtors v. Crisafi*, 533 A.2d 1242, 1244-45 (Del. Super.Ct.).

²*Id.*

administrative complaint or report. Plaintiffs argue that the Superior Court action is distinct from the administrative investigation. The Court agrees.

Plaintiffs elected to pursue judicial determination rather than an administrative hearing, which is their prerogative under the Act. *See* § 4612(a) and (b). The Commission authorized the action and the Attorney General's Office pursued it on the Commission's behalf, pursuant to § 4612(n). Once the lawsuit was filed, all parties received notice under Superior Court rules and will now have the opportunity to participate in discovery and all other aspects of the suit. Nothing in either the DFHA or FFHA prevents a plaintiff from including new parties if a court action is filed. This is a new action with new parties, but it is still a public enforcement action under the DFHA as provided for in § 4612(a), not an enforcement action by private persons, as provided for in § 4613.

Conclusion. The Court concludes that Plaintiffs have borne their burden of proving that the Court has jurisdiction over Lisa Magee and Patrick Davis. Defendants' motion to dismiss as to Defendant Magee and Defendant Davis is ***Denied.***

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

RFS/cv

cc: Prothonotary

